

May 10, 2005

The Milhous Group
791 Park of Commerce Drive
Boca Raton FL 33487

Re: Conditional Approval of Historic Kootenai Lodge Condominium Subdivision:

Dear Mr. Milhous:

The proposal was reviewed under the criteria set forth in Title 76 Chapter 3, Montana Code Annotated and the Lake County Subdivision regulations. After considering the preliminary plat, environmental assessment, public hearing testimony, planning board recommendation, additional information and weighing the subdivision review criteria, the Board of Lake County Commissioners hereby grants preliminary approval to the Historic Kootenai Lodge Condominium Subdivision with a variance to the road design criteria subject to the conditions stated below. Following each condition of approval in parentheses is the reason for the condition and evidence that justifies that condition. If you wish to appeal this decision, you may file an action in district court according to the provisions of 76-3-625, MCA.

Conditions

General Conditions:

1. Prior to commencing activities in furtherance of satisfying any conditions required for final plat approval, the record owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale shall sign the Montana Department of Environmental Quality Local Government Joint Application Form and submit evidence of the same to Lake County Planning Department staff. (*Lake County Subdivision Regulations (LCSR)*)
2. The final plat and plans, specifications, and construction of all improvements shall meet all applicable design standards and requirements of the Lake County Subdivision Regulations, the Montana Subdivision and platting act, and the Montana Code Annotated, Title 70. Property, Chapter 23. Unit Ownership Act -- Condominiums. (*Montana Subdivision and Platting Act(MSPA) and LCSR*)

3. The development of this division shall be in accordance with the general design, information, proposals and agreements provided in the preliminary plat submittal and revisions, except as modified by these conditions. (*MSPA & LCSR*)

Prior to Filing the Plat:

4. A Declaration and Bylaws for the condominium property that meets 70-23-3 MCA shall be filed with the final plat. (*MCA 70-23-3*)
5. The stormwater, water supply and sewage disposal systems and plans shall be reviewed and approved by Montana Department of Environmental Quality (DEQ) prior to final plat filing. Prior to sending the stormwater, water supply and sewage disposal plans to DEQ the consultant shall obtain copies of comments from the Planning Department regarding the sewage disposal system and include these comments in the submittal to DEQ. The proposed stormwater management plan shall include the impervious surface area for storage of boats and recreational vehicles on the site. All approved stormwater management techniques shall be implemented and all stormwater structures shall be installed according to the approved specifications. (*MSPA, LCSR and Findings of Fact Section 5.d*)
6. The public sewer district shall be established prior to filing the final plat as specified in 7-13-2201 through 7-13-2351, Montana Code Annotated. (*MCA 7-13-2201 through 7-13-2351 and staff report Section II.C*)
7. The sewer line construction plans shall be reviewed and approved by Lake County prior to construction within the public road right-of-way. (*commissioners report Section II.C, Findings of Fact Section 4.c and Lake County Resolution Number 1001*)
8. South Ferndale Drive and Sunburst Drive from Montana Highway 83 to the southern edge of the property shall be widened to current County standards, 26 feet wide with shoulders and drainage ditches, and sealed with a 2.5-inch asphalt mat. Prior to construction, the roadway improvement plans shall be reviewed and approved by the Lake County Board of Commissioners. (*commissioners report Section II.E and Findings of Fact Section 4.c*)
9. The roadways within the subdivision, as shown on the preliminary plat, shall be developed to Lake County standards including a minimum width of 26-foot drivable surface and a minimum of a chip-sealed surface. (*LCSR*)
10. An engineer licensed in the State of Montana shall certify the roadways mentioned in conditions 8 and 9 have been built to Lake County standards and all proposed stormwater management, soil stabilization and revegetation techniques have been implemented during construction. (*commissioners report Sections II.E, II.G and II.J and Findings of Fact Sections 4.c and 4.e*)
11. The owner shall provide a Centralized Box Units (CBU) or require post office boxes as part

of the covenants to accommodate mail deliveries. If a CBU is provided it shall be placed on concrete pads, poured to USPS specifications of sufficient dimension on which to install the CBU's and turn out areas of adequate size in which to locate these mailbox units." (*commissioners report Section II.L*)

12. The owner shall provide evidence to the Planning Department that the following infrastructure and land set-aside have been completed to the requirements of the Ferndale Volunteer Fire Department: (*commissioners report Section II.L and Findings of Fact Sections 1 and 4.f*)
 - A stand pipe with a 2 ½ inch fire department connection at Sunburst and Johnson Creek with another 2 ½ inch standpipe connection at Johnson Creek, at the south end of the stone bridge. The developer shall provide evidence that the Ferndale Volunteer Fire Department will maintain both stand pipes.
 - A 2 ½ inch minimum fire department connection to be plumbed in the public water system on-site. The Ferndale Volunteer Fire Department shall approve the site and the developer shall provide evidence that the Ferndale Volunteer Fire Department will maintain the connection.
 - A building site large enough for a 40-foot by 50-foot fire station on Lot 4 of "The Ridge" subdivision. The Ferndale Volunteer Fire Department shall approve the location of the site.
13. The owner shall obtain an amendment of "The Ridge" covenants allowing 1) The off-site sewer facility 2) A lot for a future fire station for the Ferndale Volunteer Fire Department 3) A helispot for the Bigfork Fire and Ambulance Service 4) A lot for the Sheriff's search and rescue division (if applicable). A copy of the amended covenants shall be provided to the Lake County Planning Department. In the event that the covenants cannot be amended the developer shall resubmit a revised plan indicating an alternative wastewater disposal site for the subdivision. Upon resubmitting an alternative site the subdivision shall go through the planning process including a public hearing with the Planning Board or as otherwise required by State law and the Lake County Subdivision Regulations. (*commissioners report Section II.C*)
14. The location of a helispot for use by the Bigfork Fire and Ambulance Service, Lake County search and rescue and other emergency service providers shall be determined by the owner and the Bigfork Fire and Ambulance Service and Lake County search and rescue. A letter shall be submitted to the Planning Department confirming the approved location of the helispot and signed by all parties. (*commissioners report Section II.L and Findings of Fact Sections 1 and 4.f*)
15. The developer shall work in conjunction with the Sheriff's Office and provide either a lot for the Sheriff's search and rescue division or an appropriate building site on the same lot as the Ferndale Volunteer Fire Department will receive pursuant to condition number 12. The lot or building site shall have an appraised value of at least \$50,000. A letter shall be submitted to the Planning Department confirming the approved location of such lot or building site

from both the developer and the Sheriff's Office. (*Findings of Fact Sections 1, 3 and 4.f*)

16. The plat shall be amended to show a second ingress or egress either next to the existing gate or in alignment with Wapiti Drive. The second entrance shall be constructed with a minimum 15-foot driving surface with one way directional travel unless two way travel is preferred in which case the minimum driving surface shall be 26-feet. (*commissioners report Section II.E and Findings of Fact Sections 7*)
17. A maximum of 24 boat slips shall be permitted for the entire property. Permits shall be obtained from the appropriate agencies prior to construction. A statement shall be placed on the final plat reflecting this condition. (*Findings of Fact Sections 4.f and 5.d*)
18. A private road users maintenance agreement shall be filed with the final plat. (*Findings of Fact Section 4.c*)
19. The developers shall install road and stop signs within the subdivision in accordance with the specifications of Resolution #04-01 prior to final plat filing. (*LCSR and Lake County Resolution Number 04-01*)
20. No new structures except lake related structures permitted by the Lake County Lakeshore Protection Regulations shall be located closer than 80 feet from the high water mark of Swan Lake and the Swan River. Modifications to existing structures within the 80 foot setback may be permitted provided the structures maintain the existing lakeshore setback and secure the appropriate permits. Within this setback no vegetative disturbance shall take place other than for the construction of walking paths, to modify existing structures and clearing of trees for reasons of health and safety. (*commissioners report Sections II.I and II.J and Findings of Fact Sections 3 and 4.d*)
21. A building setback shall be shown on the final plat along Johnson Creek. The setback along Johnson Creek shall include the 100-year floodplain width or 80 feet on either side of the stream, whichever is greater. The developer shall revegetate with natural and appropriate vegetation existing fields and open spaces within the 80 foot setback. In addition, within this setback no vegetative disturbance shall take place other than for the construction of walking paths and clearing of trees for reasons of health and safety. (*commissioners report Sections II.I and II.J and Findings of Fact Sections 3 and 4.d*)
22. The plat shall be revised to accommodate units with a 50-foot building setback along the eastern property line from Johnson Creek to the southern edge of the property. This setback shall be shown on the final plat. Within this setback no vegetative disturbance shall take place other than for the clearing of trees for reasons of health and safety and for construction of roads and utilities. (*Findings of Fact Sections 1 and 4.d*)
23. Covenants shall be filed for the subdivision containing the elements and wording submitted along with the preliminary plat application and shall be modified as stated in the commissioners report and findings of fact. (*commissioners report Section II.M*)

24. The utilities, including electrical power and telephone, from the existing overhead services, shall be installed underground to all lots within the division in accordance with Section IV-A-14 of the Lake County Subdivision Regulations prior to final plat filing. (*LCSR*)
25. The utility easement and the service provider right-to-access statement found in Section IV-A-14 of the Lake County Subdivision Regulations shall appear on the final plat. (*LCSR*)
26. All easements and rights-of-way within the subdivision shall be filed with and shown on the final plats including those easements used to access the condominium structures. Proof that the private roadways within the subdivision are located within the easements and rights-of-way shall be submitted to the Lake County Planning Department prior to final plat filing. (*LCSR*)
27. The developer shall file a Lake County Weed Board-approved weed management plan and show evidence of having paid the required inspection fee prior to final plat filing. (*commissioners report Section II.K*)
28. The following statement shall be filed along with the final plat: “Law enforcement protection will be provided to the residents of the Historic Kootenai Lodge subdivision as it is afforded to all other citizens of Lake County. Law enforcement resources and personnel are in short supply and calls are prioritized. Lot buyers are hereby put on notice that it could be quite some time before emergency calls are answered, although law enforcement personnel will respond as quickly as possible.” (*commissioners report Section II.L*)
29. The 100-year floodplain boundary along the Swan River, Swan Lake and Johnson Creek shall be shown on the final plat. (*Findings of Fact Section 5.d*)
30. The developer shall legally fence and provide more evergreen trees in addition to the berm and proposed landscaping as shown in exhibit A of the Mitigation Response Letter, along the entire northern property boundary of the subdivision. The Revised landscape and fencing plan shall be reviewed and approved by the Lake County Planning Department and installed prior to filing the final plat. (*Findings of Fact Section 4.d*)
31. A zoning district shall be implemented on the 40.9± acre property if the subdivision. The zoning district shall include, at a minimum, the proposed restrictions found in the amended covenants for the subdivision, the recommended additions to those covenants found in the Commissioners report, and the measures to mitigate the impacts of the subdivision as defined in the Findings of Fact. (*Findings of Fact Section 4.f*)

On going conditions:

32. During construction or remodeling of the condominium units the owner shall utilize a hauler to remove the construction waste. After construction the owner shall contract directly with BFI or another contractor to collect and haul the household waste. (*commissioners report*)

Section II.L and Findings of Fact Section 4.c)

33. Prior to construction involving road crossings, buried utility lines, or any modifications to the existing structures within the floodplain along Johnson Creek or Swan Lake the owner shall obtain a permit from the Lake County Board of County Commissioners and Floodplain Administrator. (*Findings of Fact Section 5.d*)
34. Proper permits from the Lake County Conservation District shall be required for any work within the bed and banks of Johnson Creek or Swan River. (*Findings of Fact Section 5.d*)
35. Prior to construction of any units the owner shall obtain a zoning conformance permit from the Lake County Planning Department. (*commissioners report Section II.M*)
36. Activities which fall under Montana Code Annotated Title 50, Chapter 51 shall be prohibited on the property. (*commissioners report Section II.M*)
37. All unit owners shall waive their right to protest a Road Improvement District (RID) for Sunburst Drive. (*Findings of Fact Section 4.c*)
38. All new and modified structures shall not exceed 30 feet in height. (*commissioner report Section II.I and Findings of Fact Sections 3 and 4.f*)

This recommendation for conditional approval is for the creation of 57 condominium units to be developed with 49 single-family structures and 4 multi family structures. Any expansion or additional land uses must be reviewed by Lake County. Conditional approval shall expire on May 10, 2006 unless an extension is requested and granted by the Lake County Board of Commissioners prior to the expiration date.

Sincerely,
Lake County Board of Commissioners

Mike Hutchin
Chairman

Chuck Whitson
Member

Paddy Trusler
Member

FINDINGS OF FACT
HISTORIC KOOTENAI LODGE CONDOMINIUM SUBDIVISION
MAY 10, 2005

In reviewing the Historic Kootenai Lodge Condominium Subdivision preliminary plat application, the Lake County Board of Commissioners finds the following:

1. Relevant evidence relating to public health, safety and welfare

As described below and in the commissioners report, the revised proposal includes a number of steps to limit impacts to public health and safety including improving the access roadways leading to the project site to current County standards. The developer has also shown dry hydrants on the revised preliminary plat along Johnson Creek as requested by the Ferndale Volunteer Fire Department. In addition, the Bigfork Fire and Ambulance Service's requests have been addressed by the developers in their proposal for a helispot to be located in the area of the off-site drainfield. The developers have also been required to provide the Sheriff's Office search and rescue division with a building site on or land in the area as well as providing the Ferndale Volunteer Fire Department with land on the proposed waste water treatment facility site to accommodate a future fire station in the area.

The preliminary plat shows proposed condominium units 28, 35, 36 and 57 indicates the units will either be on the property line, proposed unit 35, to approximately 45 feet from the property line, proposed unit 57. The County Commissioners have required a 50-foot building setback along this portion of the property in order to allow for future expansion of the road and road right-of-way. In addition to providing the expansion of future road right-of-way, the 50-foot building setback will provide a vegetative buffer from the new condominium units to the road and existing homes.

2. The Environmental Assessment

The environmental assessment provided by the developers addresses the questions listed in Appendix C, Part III, Information Required For Environmental Assessment Under The Subdivision And Platting Act. A further evaluation of the remarks made within the environmental assessment can be found in Sections 1, 3, 4 and 5 of the Findings of Fact and in the commissioners report.

3. The Lake County Growth Policy

The Lake County Growth Policy is a general policy document that meets the requirements of 76-1-601, MCA and was adopted on August 19, 2003.

As stated in the Introduction portion of the Lake County Growth Policy, "This document is an update to the 1988 General Plan, which is now called a growth policy, in accordance with 76-1-601 Montana Code Annotated. A growth policy is a land use planning document that is designed to guide and facilitate future growth and

development in ways that limit the negative impacts of growth. It is not a regulatory document, but instead provides a framework and rationale for developing procedures, policies and working on specific projects that are intended to guide future population growth and development in a cohesive and intelligent manner.”

The last sentence of the Growth Policy states, “Lake County is growing and will continue to develop. The Lake County Growth Policy is intended to help guide and manage that change while protecting the resources and values that give us a great quality of life and make our home a very special place.”

The developer has stated in Section I, Land Use, of the Environmental Assessment for this project and in the amendment to the Environmental Assessment, submitted March 29th to the Lake County Planning Department, that the proposed subdivision meets the following goals and objectives contained in the Lake County Growth Policy and the Governing Body concurs on the following:

Chapter 1, Goal 2

Aid the formation and expansion of public infrastructure so that facilities are available for population growth and economic development to take place in a cost-effective manner.

Chapter 4, Objective 1A

Encourage the formation, development and expansion of public sewer and water systems, particularly close to the vulnerable aquifers below Arlee and Pablo, and potentially in areas around the perimeter of area lakes and in the Ferndale area.

The Developer is proposing to construct a sewer treatment facility, which upon completion, would be turned into a public sewer district to serve the proposed division and would allow for the potential of additional hookups for lots with failing systems along Swan Lake. The developer contends that this would be a positive infrastructure for the community.

Chapter 1, Goal 3

Capitalize on and protect Lake County’s natural resources in order to attract and guide high quality development.

Chapter 4, Goal 1

Protect surface and groundwater resources before, during and after development

Chapter 4, Goal 5

Protect important wildlife habitat and migration corridors.

The proposed development has been revised to increase the buffers areas along the Swan River, Swan Lake and Johnson Creek and limit disturbance in these areas. The revised

project has also reduced the number of proposed dwellings and the amount of roads needed to serve those dwellings.

The County Commissioners felt that the proposed 80-foot setback from Johnson Creek as well as revegetation of existing fields and open spaces within the 80-foot setback was appropriate mitigation for potential impacts to the creek.

Chapter 4, Goal 9

Protect the area's scenic resources, which are an integral part of our high quality of life and an economic asset.

Through the reduction of the number of dwellings originally proposed, 65, with the new proposal, 57, the developer has stated that this will require the removal of approximately 146 trees with a diameter at breast height of 10 inches or greater. This will leave approximately 860 trees (over 83 percent) with a diameter at breast height of 10 inches or greater on the property. The developer has proposed additional trees and landscaping along the Swan River and throughout the development in order to ensure the high quality visual environment is maintained. The developer contends that the combination of substantial new vegetation along the river and maintenance of the majority of the trees on the rest of the property, the view of the new development will be buffered from surrounding landowners and therefore would comply with this goal.

In order to fully comply with the above stated goal the County Commissioners have placed a condition requiring a 50-foot building setback along Sunburst Drive.

Chapter 5, Goal 4

Require developers to pay for the impacts of their projects on public infrastructure and services.

Chapter 6, Goal 2

Ensure that police protection, ambulance, fire safety and school district concerns are addressed and measures are implemented to protect residents and property in all areas of Lake County.

In order to mitigate any impacts to the existing roadway network in the vicinity of the subdivision, the developer has proposed to rebuild South Ferndale Drive and Sunburst Drive from Montana Highway 83 to the southern edge of the property to 26 feet wide and to seal the roadways with a 2.5-inch asphalt mat. The total distance of the upgrade is approximately 1.6 miles.

As stated previously in Section 1, Relevant evidence relating to public health, safety and welfare, the developer has proposed infrastructure improvements and land off site in order to comply with the requests from the Ferndale Volunteer Fire Department and Bigfork Fire and Ambulance Service.

Given past precedent in mitigating impacts to public infrastructure, as well as fire and ambulance services, the County Commissioners agreed that the measures proposed by the developer would be sufficient to mitigate or off-set potential impacts.

Regarding the Sheriff's comments, the County Commissioners have required the developer to either provide a lot for the Sheriff's search and rescue division or an appropriate building site on the same lot as the Ferndale Volunteer Fire Department will receive. The County Commissioners have also required the developer to put a statement notifying future owners of slow response time and a lack of police resources on the final plat.

Chapter 2, Goal 3

Encourage housing that maintains traditional development patterns and protects property values and natural resources.

In order to fully comply with the above stated goal the County Commissioners have also required all new and modified structures on the property not to exceed a maximum height of 30 feet.

Chapter 4, Goal 7

Protect and encourage the prosperity of the area's cultural resources.

The developer contends that although the project has a slightly higher density than the surrounding development, it will only increase nearby property values and will mitigate potential impacts to natural and cultural resources. The developer has also indicated in the amendment to the environmental assessment that in order to utilize the existing structures on the property, a higher dwelling unit density than the surrounding area is required. The developer believes this is a trade off that will result in the most desirable of a number of potential options for the property and area as a whole because it will generate so few impacts.

A letter from the Salish-Pend d'Oreille Cultural Committee states the Committee has concerns that, "A development of this scale in the area, completely out of proportion to all existing developments in the Swan Valley, would dramatically change the cultural, economic, environmental, and social character of the area." The letter also raises questions regarding the proposed wildlife mitigation proposed by the developer and potential impacts the project may have on plants and animals in the area. The letter concludes by stating, "Our cultural survival is tied to the well-being of the plants we use for food and medicine, to the animals and fish we rely upon spiritually and materially, to the protection of the land itself. When these things are damaged, we are damaged."

Planning staff would note that the Cultural Committee commented on the original proposal as submitted on February 9th to the Lake County Planning Department. The revised proposal does address some of the Cultural Committees concerns regarding wildlife impacts. At the Commissioners hearing the County Commissioners required the

developer to meet the setbacks along the Swan Lake and River as requested by Montana Fish, Wildlife and Parks and the Flathead Biological Station. However, the County Commissioners reduced the setback requested by Fish, Wildlife and Parks along Johnson Creek from 100 feet from the creek to 80 feet. The Commissioners have required additional revegetation within this 80 foot setback to mitigate impacts to the creek.

4. Chapter Seven, Section II of the Lake County Growth Policy defines the primary review criteria Lake County uses to review subdivisions as described below.

The primary review criteria for subdivisions

a. Effect on agriculture

Pursuant to the United States Department of Agriculture (USDA) and Natural Resource Conservation Service 7.5 minute Quadrangle map for the area of the project site, two soil classes cover the 41± acre site. These soils include Glaciercreek, a gravely silt loam covering approximately 37± acres, and Half Moon, a silt loam covering approximately 4± acres in the northern most portion of the 41± acre project site. The accompanying soil survey information for the USDA Quadrangle map indicates both of the soil classes found on the project site are poorly suited to cultivated crops because of their short frostfree period.

In addition to the soils present on the property the surrounding area is developed with single family residential lots. The Swan Sites subdivision number 1 surrounds the project site to the north, south and east. Along the western property line lies Swan Lake and Swan River. Swan Sites Subdivision number 1 is within the Swan Sites Zoning District, created April 7, 1994. The Zoning District maintains the single-family residential land use in the surrounding area and, to date, numerous lots are already developed with homes. Therefore, due to the existing soil conditions on the property and surrounding land uses, the proposed subdivision will not have a significant impact on agriculture in Lake County.

b. Effect on agricultural water users facilities

According to the application submitted by the developer the Kootenai Lodge property has a number of historic, seasoned water rights. Usages of these water rights vary from commercial and residential to irrigation and power generation. Points of diversion range from on-site extraction by well to off-site surface water from surrounding Johnson and Schmidt creeks. Below is a tabulation of water rights in the Roling’s name (current owner of site as of 2/8/05) and will be transferred to the developer with the intended real estate transaction. The water rights that will be available to the Kootenai Lodge development site strictly for irrigation purposes, as stated in the environmental assessment, include:

IRRIGATION

76K 40317	JOHNSON CREEK	20-Aug-1896	196
76K 40318	JOHNSON CREEK	11-Oct-1906	95
76K 40319	JOHNSON CREEK	1-Aug-1914	170

76K 40320	SCHMIDT CREEK	22-Nov-1923	69.7	
SUBTOTAL			530.7	GPM

Pursuant to the Lake County Growth Policy a subdivision proposal may have an unacceptable effect on agricultural water user facilities if it does not comply with the irrigation provisions of the Lake County Subdivision Regulations and, at a minimum, it fails to set up a reasonable mechanism for delivering irrigation water to the lots, does not include sufficient easements for ditch and system maintenance, or is likely to result in the disruption of service to downstream users.

The proposed subdivision intends to create 57 condominium units over the 41± acre property. The number of units, in addition to the required roadways, would leave very little room for irrigation of any type of crop on the property and, as stated in the effect on agriculture Section of this document, the soils are not conducive for growing crops. The purpose of this Section is to address potential impacts to surrounding irrigated farmland, where farming operations depend on irrigation water for survival of their crops or livestock. The majority of irrigated farmland in Lake County is located in the Polson area south to the County line.

The project site is not within an irrigation district and no irrigation water is currently used on the property. The surrounding land uses are residential and no farms are depending on the water which flows in Johnson Creek in the area of the subdivision. Therefore, the proposed subdivision will not have a significant impact on agricultural water user facilities in Lake County.

c. Effect on local services

According to the Lake County Growth Policy, the term local services refers to sewer, water, roads, telecommunications, schools, electrical utilities and solid waste disposal services.

As discussed in the commissioners report, Section II.C, the developers have proposed a new public water system to serve the condominium units. The water system will be owned and operated by the Condominium Owners Association. The water system will utilize two proposed on-site wells supported by pumping facilities located in an on-site pump house.

As discussed in the commissioners report, Section II.C, the proposed condominium project would utilize an on-site conventional sewer system, which will collect the sewage and convey it to a common lift station site. The lift station and associated force main is proposed to convey sewage approximately 5,000 feet south within the Sunburst Road right-of-way to an off-site level II wastewater treatment facility. Further discussion of the off-site level II wastewater treatment facility can be found in Section 5.d of this report.

Sunburst Drive via South Ferndale Drive provides Road access to the property. Both of these roads do not meet current County standards for width. The developer has proposed to widen both roads, South Ferndale from its intersection with Highway 83 west to the intersection with Sunburst Drive, and Sunburst Drive, from its

intersection with South Ferndale south to the southern edge of the Kootenai Lodge property to current County standards. This would include a 26-foot driving width in addition to road shoulders and drainage ditches. The developer has also proposed to seal the roadways with a 2.5-inch asphalt mat. The internal roadway serving the proposed condominium units would be served by roads meeting County standards, this includes a 26-foot wide driving surface within a 60-foot road right-of-way. Because the internal roadways are proposed to be built and maintained using private funds they would not impact the ability of the Lake County Road Department to meet existing demands. However, the roads outside of the subdivision will experience wear and tear due to the increased traffic this proposal will generate. Therefore, in order to mitigate future road impacts as a condition of approval the County Commissioners have required the condominium owners waive their right to protest the formation of a road improvement district.

Program Manager of the Lake County Solid Waste District stated that the proposed development could adversely affect the Solid Waste District by increasing the pressure on the already limited resources of the Ferndale container site. In order to address the above concerns the developers have indicated they would be contracting with a private hauler both during and after construction. The Program Manager of the Lake County Solid Waste District agreed that if the waste removal was contracted for hauling he would not have any concerns with impacts to the Ferndale container site. This was made a condition of approval by the County Commissioners.

The telephone, school, electrical power, health care providers have stated they can and will serve the future residents of the subdivision. Based on the project proposal, the impacts of this subdivision on local services are expected to be minimal.

d. Effect on the natural environment

Pursuant to Section 7-II-3 of the Lake County Growth Policy, the term natural environment encompasses a number of things, including, but not limited to, ground water, surface water, wetlands, scenic views and air quality. A subdivision proposal may have an unacceptable effect on the natural environment if, after qualitative and quantitative review, it is found likely to jeopardize the existing environmental quality in an area. Swan Lake and the Swan River are located along the western edge of the project site and Johnson Creek, a perennial stream, flows from east to west through the project site and empties into the Swan River.

The current condition of the property is a park like setting with 23 structures including 10 cabins and numerous outbuildings. The closest building to Johnson Creek is an old shed approximately 30'x20' which is situated a few feet from the creek bank. Along Swan Lake the closest cabin is approximately 20 feet from the high water mark with other cabins between 40 feet to upwards of 140 feet from the high water mark.

The proposed development would place 43 new residential structures and one

clubhouse on the property. The new residential structures are proposed a minimum of 80 feet from the high water mark of Swan Lake and along the Swan River. The new residential structures are also proposed a minimum of 80 feet from Johnson Creek. Of the nine existing structures along Swan Lake, eight are to remain, seven of which are proposed to be expanded.

In an effort to address the water quality concerns associated with the project, the developers have proposed a number of measures. These measures include an off-site Level II wastewater treatment system, an 80-foot building setback in which existing vegetation would be maintained except for clearing of small walking paths. The developer has also proposed enhancing the existing vegetation along the Swan River. Other measures to insure water quality as noted in the environmental assessment are adherence to DEQ standards for lot and roadway stormwater management, paving of the primary roadway and a reduction in the number of condominiums from 65 to 57 which, in turn, has reduced the linear feet of the roadway by 15.5% from the original proposal.

Scientists from Montana Fish, Wildlife and Parks, U.S. Fish and Wildlife Service and Flathead Lake Biological Station have all reviewed the subdivision proposal and submitted detailed letters of review. The revised project complies with the majority of the measures suggested by these agencies in order to protect water quality. As stated above, the revised project has the new residential structures located a minimum of 80-feet from Swan Lake, the Swan River and Johnson Creek. The setback would meet the recommendations of the Flathead Lake Biological Station in regards to setbacks from the Swan River.

The County Commissioners have required all new structures be located outside of the 100-year floodplain width or 80 feet on either side of the creek, whichever is greater. The County Commissioners have also required that within the 80 foot setback the developer shall revegetate with natural and appropriate vegetation existing fields and open spaces. In addition, within this setback no vegetative disturbance shall take place other than for the construction of walking paths and clearing of trees for reasons of health and safety. With the additional revegetation requirement in place along with the other quality protection measures presented by the developer, the County Commissioners felt the proposed subdivision would not have a significant impact on water quality.

As discussed in Section II.I in the commissioners report, approximately 146 trees will have to be removed. However, as the amendment to the environmental assessment states, over 83 percent of the current trees on the property will be retained and other trees and landscaping will be added in order to ensure the high quality visual environment is maintained. The developer feels that the combination of substantial new vegetation along the river and maintenance of the majority of the trees on the rest of the property will buffer the view of the new development from surrounding landowners.

Although the developer has gone to great lengths to maintain as many large trees as

possible, several of the proposed condominium units, proposed units 28, 35, 36 and 57 as shown on the revised site plan, vary between being placed on the property line, proposed unit 35, to approximately 45 feet from the property line, proposed unit 57. In order to buffer the development from surrounding lands and maintain a tree corridor along Sunburst drive, the County Commissioners have required the plat be amended to provide a 50-foot setback along the eastern property line from Johnson Creek to the southern edge of the property. Within this proposed corridor there are a number of existing large and small pines and fir trees to buffer the new development from the road and neighboring residents.

The northern boundary of the property is flat with a large field with homes located directly north of the property. These homeowners have expressed concerns about the number of units proposed in the existing field and what this would do to their privacy and enjoyment of their property. The developer responded by proposing a berm with landscaping along the northern boundary. The County Commissioners expanded the landscaping required along the northern boundary and added that the boundary be legally fenced.

e. Effect on wildlife and wildlife habitat

This property is located in an area that is developed with single-family residential tracts. The property has large fields and a tree lined stream with the majority of the property undeveloped at this time.

The developer has proposed efforts to mitigate impacts to wildlife and wildlife habitat including setbacks along the Swan River, Swan Lake and Johnson Creek as discussed above, reducing the number of condominium units on the property, a stormwater management plan, a level II off site sewer treatment facility and amending the draft set of covenants as recommended by Montana Fish, Wildlife and Parks and the U.S. Fish and Wildlife Service.

A number of letters received by the Planning Department on the proposed project had concerns regarding the impacts the proposed subdivision would have bull trout, bald eagles, deer, elk and grizzly bears. Letters from the Montana Fish, Wildlife and Parks and the U.S. Fish and Wildlife Service have recommended setbacks and amendments to the covenants in order to mitigate any potential impacts. The letters are summarized in Section II.J of the commissioners report.

Planning staff contacted Fish, Wildlife and Parks on March 18th to discuss potential impacts the project may have on bald eagles. Fish, Wildlife and Parks indicated the closest known bald eagle nest is located to the west approximately one mile. Due to the location of the bald eagle nest, Fish, Wildlife and Parks felt the proposed subdivision would not have an impact of bald eagles living in the vicinity.

The County Commissioners have required a number of conditions, based on input from the biologists at Montana Fish, Wildlife and Parks, U.S. Fish and Wildlife Service and Flathead Lake Biological Station, in order to mitigate potential impacts

the proposed subdivision may have on wildlife and wildlife habitat. These are discussed in Sections II.I, II.J and II.M in the commissioners report and in Section 4.d of the Findings of Fact.

f. Effect on public health and safety

The developer has proposed to mitigate impacts the proposed project may have on public health and safety by addressing the requests of local service providers as discussed in Section II.L of the commissioners report and Section 1 and 3 of the Findings of Fact.

A number of letters received by the Planning Department on the proposed project had concerns regarding the impacts the proposed subdivision would have on service providers like the fire department and Sheriff's Office. At this time Lake County does not have provisions for an impact fee requirement in place, which would condition subdivision approvals upon payment of a per lot or condominium unit fee to the fire and police departments, in order for these service providers to pay for more personnel and equipment. Until such an impact fee is established subdivision proposal need only to work with the service providers and address their concerns on a case by case basis. As stated in the commissioners report and findings of fact, the developer has proposed a number of items in conjunction with the input from police, fire and ambulance services and the County Commissioners have required infrastructure improvements or land set asides in order to address impacts the subdivision may have on police, fire and ambulance services.

Concerns were also raised by neighboring residents and the Planning Board regarding the increase in the number of boat docks on the project site. This increase in boat docks correlates directly with the increase in boat traffic. Neighboring residents concerns stemmed from the fact that this portion of the lake is shallow and can be difficult to navigate to deep waters located south of the project site. In order to address these concerns the developer has restricted the development to a maximum of 24 boat slips to be provided for homeowners to tie up boats on the property. In order to construct these slips the developer will need to obtain a lakeshore construction permit through the Lake County Planning Department.

The revised project includes improving South Ferndale Drive and Sunburst Drive from Montana Highway 83 to the southern edge of the property to 26 feet wide and to seal the roadways with a 2.5-inch asphalt mat. As stated in the commissioners report, Section II.E, South Ferndale Drive and Sunburst Drive do not meet current County standards for the number of lots each of the roads serve. Improving these roadways to meet or exceed current County standards would mitigate impacts the additional traffic would have on the existing roads.

The County Commissioners have also required all new and modified structures on the property not to exceed a maximum height of 30 feet. The requirement was based to improve the Ferndale Volunteer Fire Departments ability to fight structural fires

on the property, as well as to meet Goal 3 of Chapter 2 of the Lake County Growth Policy.

The County Commissioners have also required the draft set of covenants be amended to remove the right to expand language found in section 1.3 of the covenants. The purpose of removing this language is to prohibit further use of the Kootenai Lodge lakeshore by other lot owners outside of the Kootenai Lodge subdivision. By prohibiting other lot owners outside of the Kootenai Lodge from using the property as a boat launch, the County Commissioners felt that this would be appropriate to address boat traffic concerns along the lake.

Enforcement of the restrictions placed in the covenants was a concern for many land owners and residents in the area. They felt that restrictions placed in the covenants was not enough because the future condominium owners can change covenants and the County does not have regulatory authority or enforcement over the covenants. Therefore, the County Commissioners have required a zoning district be in place prior to filing the final plat which would include, at a minimum, the proposed restrictions found in the amended covenants for the subdivision, the recommended additions to those covenants found in the Commissioners report, and the measures to mitigate the impacts of the subdivision as defined in the conditions of approval and findings of fact. This would allow the County to enforce those land uses and other restrictions ultimately contained in the zoning district.

Based on all of the factors described above and reflected in the recommended conditions of approval, the proposed subdivision is likely to have a limited impact on public health and safety.

5. Whether the plat conforms to the provisions of:

a. The Montana Subdivision and Platting Act

The preliminary plat itself would conform to all the provisions of the Montana Subdivision and Platting Act if the condominium units, roadway and utility easements/rights-of-way proposed to serve the units on the property are clearly delineated on a plat recorded with the County Clerk and Recorder and meet all applicable design standards of Montana Code Annotated, Title 70, Chapter 23.

b. The Lake County Subdivision Regulations

The plat itself conforms with the Lake County Subdivision Regulations in terms of form and content and Lake County has a procedure in place to ensure compatibility with State surveying requirements.

Two variances were requested as discussed in Section II.E of the commissioners report and approved by the County Commissioners. The two variances are the only deviation from the Lake County Subdivision Regulations.

Proper legal and physical road access can be provided and, with the conditions of approval, the threats to public health and safety, the natural environment and wildlife and wildlife habitat have been sufficiently mitigated.

The application itself is incomplete at this time because the Montana Department of Environmental Quality Local Government Joint Application Form fails to carry the current property owner's signature or the responsible officer of the corporation offering the property for sale. Pursuant to Section II.B.2 of the Lake County Subdivision Regulations, the subdivider is required to submit a completed copy of the Montana Department of Environmental Quality Local Government Joint Application Form. As of April 7, 2005, the Lake County Clerk and Recorder's Office has Mark and Debi Roling as the current owner of Tract B of Amended Plat of Lot 128, Swan Sites Subdivision Number 1 (project site) as stated in document number 437240 of the Lake County Clerk and Recorder's Office. The owner's signature on the Montana Department of Environmental Quality Local Government Joint Application Form is required for the Department of Environmental Quality (DEQ) to process a subdivision application. Therefore, as a recommended condition of approval, the County Commissioners have required that prior to commencing activities in furtherance of satisfying any conditions required for final plat approval, the record owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale shall sign the Montana Department of Environmental Quality Local Government Joint Application Form and submit evidence of the same to Lake County Planning Department staff.

c. Zoning Regulations

The property is not zoned.

d. Other regulations in effect in the area of the proposed subdivision.

Other regulations in effect include the Swan Sites Zoning District, the Lakeshore Protection Act, the Sanitation in Subdivisions Act and floodplain permit requirements for work within a floodplain.

As discussed in the commissioners report, Section I.C, the property is surrounded by the Swan Sites Zoning District. The proposed project would create a higher density than what is currently allowed within the Swan Sites Zoning District (0.7± an acre per dwelling unit as compared to the Swan Sites Zoning District which currently provides an average density of approximately 2.5 acres per dwelling unit throughout the entire District) and allow for duplexes on the project site, currently prohibited in the zoning district. However, as the property is not zoned and as discussed in the commissioners report and findings of fact, all of the primary review criteria pursuant to Section 76-3-608 MCA and further defined in Chapter 7 of the Lake County Growth Policy have been adequately addressed. Therefore, the County Commissioners gave conditional approval of the 57 unit condominium subdivision because it would not significantly impact agriculture, agricultural water users facilities, local services, the natural environment, wildlife and wildlife habitat and public health and safety.

The Lakeshore Protection Act governs work from the lakebed to 20 feet above the high water mark and Lake County has adopted regulations to carry out its provisions. As indicated in the amendment to the environmental assessment, the developer is proposing a boat access on the property and restricting the number of boat slips to a maximum of 24. In the conditions of approval, prior to constructing the slips, the developer or homeowners will need to secure a lakeshore construction permit from the Planning Department. Pursuant to Section 5-1 (A) of the Lakeshore Regulations the construction of the docks shall not:

- (1) materially diminish water quality,
- (2) materially diminish habitat for fish or wildlife,
- (3) interfere with navigation or other lawful recreation,
- (4) create a public nuisance,
- (5) create visual impact discordant with the background landscape or aesthetic values of the lakeshore, nor
- (6) significantly alter the natural characteristics of the lakeshore.

Based on the public's concern that adding additional units on the project site will increase boat traffic in this section of Swan Lake, in order to comply with item number 4 of Section 5-1 (A) the County Commissioners felt it is appropriate to limit the maximum number of boat slips to 24 for the entire property and disallow the potential to expand use of the property.

The Sanitation in Subdivisions Act, M.C.A. 76-4, governs water supply, wastewater management, solid waste, and stormwater runoff within subdivisions. As stated in the commissioners report, the developer is proposing public water and wastewater systems. The preliminary plats accompanying the application show the approximate locations of the wells and off-site wastewater treatment facility. If the subdivision receives preliminary plat approval, the Montana Department of Environmental Quality will formally review the sanitation proposal under M.C.A. 76-4. This review will include evaluation of water quality, quantity, and dependability. The Lake County Environmental Health Department must provide local health officer approval as part of the sanitation review requirements.

Comments received from the Flathead Lake Biological Station and U.S. Fish and Wildlife Service have recommended the off-site sewer treatment facility should utilize a tertiary treatment facility instead of the proposed Level II system. A number of neighboring lot owners also have concerns with the location of a sewer facility in close proximity to the lake and wells. Although these comments must be considered as part of the planning review process, whether a tertiary treatment facility would be required is ultimately up to DEQ, which has a separate review process. Condition number 5 requires that, upon submitting an application to DEQ for the sewer treatment facility, the developer shall include the letters from the Biological Station, U.S. Fish and Wildlife Service as well as the commissioners report which refers to

the neighbors concerns regarding the proposed sewer treatment facility. This would at the very least provide DEQ with concerns from other agencies and neighbors when reviewing the proposal.

As stated in the commissioners report, the developers propose a number of measures meant to prevent water quality impacts associated with stormwater runoff. The measures include containing lot and roadway runoff, BMPs implemented during home and road construction and providing vegetative buffers along the water bodies. Pursuant to condition number 5, the developers' formal stormwater management plan would be reviewed and approved by the Lake County Environmental Health Department and DEQ prior to final plat filing.

The preliminary plat currently shows the 100-year floodplain along Johnson Creek, the Swan River and Swan Lake. In order to convey this floodplain information to future property owners the County Commissioners have required that the 100-year floodplain be shown on the final plat. The floodplain development permit requirements would come into effect when the developer expands proposed condominium units 40&41, 49&50 and 51&52. A floodplain permit would also be required when the developer constructs water and sewer lines to these structures as well as to cross Johnson Creek. Proper permits from the Lake County Conservation District would also be required for any work within the bed and banks of Johnson Creek

6. Provision of easements for the location and installation of any planned utilities

The proposal currently provides adequate easements for utilities and all necessary easements shall be clearly located on the final plat to adequately satisfy these requirements.

7. Provision of legal and physical access to each parcel

Sunburst Drive provides access to the project site with an internal road network providing access to the individual condominium units. The interior road network is proposed to comply with the road standards in the Lake County Subdivision Regulations except for two areas, an existing bridge across Johnson Creek and the southern entrance gate. In order for these standards to be reduced, the County Commissioners found that the request met the conditions for granting a variance found in Section VIII-B of the Lake County Subdivision Regulations but placed a condition on the subdivision that prior to filing the final plat the developer shall show a second ingress or egress either next to the existing gate or in alignment with Wapiti Drive. The second entrance shall be constructed with a minimum 15-foot driving surface with one way directional travel unless two way travel is preferred in which case the minimum driving surface shall be 26-feet. The developer has indicated he will upgrade two existing County roads leading to the project site, South Ferndale Drive and Sunburst Drive, to current County standards which is required as a condition of approval. Therefore, this subdivision would not significantly impact access, traffic or the public roads.

These findings of fact are hereby adopted by the Lake County Board of Commissioners on May 10, 2005.

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